

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

PACITA Q. NARVASA,  
Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,  
Agency.  
(CSF 1 877 365)

DOCKET NUMBER  
SE08319010531

DATE: FEB 22 1991

Pacita Q. Narvasa, Pangasinan, Philippines, pro se.

Kenneth R. Brown, Washington, D.C., for the agency.

BEFORE

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

OPINION AND ORDER

The appellant has filed a timely petition for review of the October 22, 1990 initial decision affirming the reconsideration decision of the Office of Personnel Management (OPM). We find that the petition does not meet the criteria for review set forth at 5 C.F.R. § 1201.115, and we therefore DENY it. We REOPEN this case on our own motion under 5 C.F.R. § 1201.117, however, and AFFIRM the initial decision as MODIFIED by this Opinion and Order, still SUSTAINING OPM's reconsideration decision denying the appellant's request for survivor annuity benefits.

### BACKGROUND

The appellant applied for survivor annuity benefits on the basis of her deceased husband's military service with the U.S. Army from 1946 to 1949, and with the Armed Forces of the Philippines from 1954 to 1955. OPM found that, at the time of his death, the appellant's deceased spouse was neither an employee serving in a position covered by the Civil Service Retirement System (CSRS) nor a CSRS annuitant. Further, OPM found that a lump sum benefit was not payable because the appellant's deceased husband never served in a civilian position in which retirement deductions were withheld.

In her initial decision, the administrative judge affirmed OPM's reconsideration decision. Citing *Noveloso v. Office of Personnel Management*, 45 M.S.P.R. 321 (1990), she found that there was no evidence that the appellant's deceased husband had completed 5 years of creditable civilian service.

### ANALYSIS

Although the administrative judge reached the correct result in this case, her analysis focused on the requirements for a deferred retirement annuity rather than on the requirements for a survivor annuity. A survivor annuity is payable only if the person on whose service the claim is based died while serving in a position covered by the CSRS after completing at least 18 months of service, or was an annuitant who died after electing to provide a survivor annuity for his spouse. See 5 U.S.C. § 8341(b) and (d). If no survivor

annuity is payable, and if the deceased employee served in a position covered by the CSRS, 5 U.S.C. § 8342(d) provides for payment of a lump sum benefit representing the unrefunded retirement deductions.

As correctly found by OPM, since it is undisputed that the decedent was neither a Federal employee nor a retiree when he died in 1989, the appellant is not entitled to receive a survivor annuity on these bases. See *McCurry v. Office of Personnel Management*, 45 M.S.P.R. 393, 396 (1990); *Lapenas v. Office of Personnel Management*, 44 M.S.P.R. 303, 307 (1990). Further, because there is no evidence showing that the appellant's husband ever served in a covered position in which retirement deductions were made, the appellant is not entitled to a lump sum benefit. See 5 U.S.C. § 8342.

This is the final order of the Merit Systems Protection Board in this appeal. See 5 C.F.R. § 1201.113(c).

#### NOTICE TO APPELLANT

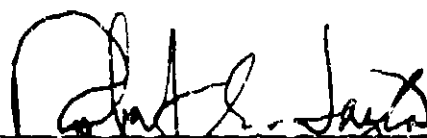
You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20540

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board